

### **REMARKS**

The Office Action mailed on November 5, 2008 rejected claims 1-24.

With entry of this Amendment and Response claims 1-2, 10-12, 15, 17, 18, 20-24 are amended, claims 4-5, 13 and 19 are canceled and claims 25-27 are added. Support for the amendments and new claims is found throughout the specification, e.g., at least in pg. 5, line 30 through pg. 5, line 3, pg. 8, line 30 through pg. 11, line 18, and Figs. 2-4. No new matter is added.

Applicants respectfully thank Examiner D'Agostino for his time and preparation for the Examiner Interview conducted with the Applicants on April 15, 2009. Though agreement was not reached as to the previously presented claims and obviousness in light of Kirmse and Garg, Applicants nonetheless appreciate the Examiner's views on the how the Kirmse reference did not anticipate the invention as recited by the previously presented claims. Applicants also thank the Examiner for bringing references US 7,240,093 and US 5,774,673 to the Applicants' attention.

With entry of this Amendment and Response claims 1-3, 6-12, 14-18, and 20-27 will be pending and under consideration.

#### ***Rejections Under 35 U.S.C. § 102(b)***

Claims 1-5, and 7-24 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Publication No. 2002/0086732 to Kirmse ("Kirmse"). The rejections of independent claims 12 and 18 are similar to those of claim 1, so arguments made herein with respect to the patentability of claim 1 apply equally to claims 12 and 18.

The Office Action alleges that Kirmse discloses:

"a system (10) for facilitating multiplayer gaming over a computer network (16), the system comprising: a client program running on a terminal (12) that automatically detects when selected individuals are playing certain multiplayer games on the computer network (Figs. 1 and 8-10; paras. 0029 and 0053), notifies a user of the games and the selected individuals playing the games (para. 0053) and wherein the program detects one or more of the games are running on the terminal"

Office Action at pg. 4. Though Kirmse teaches showing that individuals on a "friends list" are playing a game, Kirmse does not teach the limitations recited in amended claim 1, namely:

1. "...the client program is further adapted to search for and detect when one or more of the games are executing on the terminal ...;" (emphasis added)

or

2. "a second program, separate from the games executing on the terminal, that determines a connection status of the executing games and communicates the connection status to the client program; ..." (emphasis added)

**1. Kirmse Does Not Recite Determining Which Games Are Executing On The User's Terminal, Nor Is Such A Determination Obvious.**

As discussed in the Examiner Interview, Kirmse does not teach determining which games are executing on the *user's* computer. Applicants' understanding was that the Examiner acknowledged this and based on this, Applicants respectfully request the Examiner withdraw the rejection under § 102(b).

During the Interview, the Examiner noted that Kirmse does determine which games are installed on the user's computer. See Kirmse, ¶ [0056]. Applicants respectfully submit that determining which games are executing on the terminal is not the same as, nor an obvious variation of, determining which games are installed. Where Kirmse discusses reviewing registry entries to determine if a game is installed, examining registry entries does not teach or suggest determining that the game is executing. Indeed, registry entries can reference games that, while installed at some point, are no longer installed.<sup>1</sup> Instead, Kirmse relies on the game's developers to have installed software development kit (SDK) code into their game in order to communicate with Kirmse's messaging client and for the game itself to notify Kirmse's messenger that it is executing. See, e.g., Kirmse at ¶ [0061]. If the game does not contain this code, Kirmse's messenger has no knowledge that the game is executing, even if it could determine that the game is installed. See, e.g., Kirmse, Fig. 2, and ¶ [0037].

"The mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art." MPEP 2143.01, III. However, "[a] statement that modifications of the prior art to meet

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<sup>1</sup> As evidenced by the myriad of "registry cleaning" software packages in existence.

the claimed invention would have been ‘well within the ordinary skill of the art at the time the claimed invention was made’ because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references.” MPEP 2143.01, IV, citing Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

Here, no reference on the record, in combination with Kirmse, teaches or suggests, a client program that searches for and detects when one or more of the games are executing on the terminal. Furthermore it would not be obvious to combine a reference that does teach searching for and detecting which processes are executing on the terminal with Kirmse because Kirmse already uses a means – albeit incompatible with the claimed invention – in which games that are running initiate communication, via the SDK code incorporated into each game, to signal to the messenger that the game is executing. It would be redundant to have Kirmse be signaled by a game that it is executing and to additionally have a messaging program that searches for and detects if the game is executing. With such redundancy, not only is the claimed feature not disclosed, there would be no reason, suggestion, or motivation to modify Kirmse with this redundant claimed feature.

**2. Kirmse Does Not Teach Or Suggest A “Second Program, Separate From The Games Executing On The Terminal, That Determines A Connection Status Of The Executing Games.”**

Kirmse also fails to teach or suggest a second program for determining a game’s connection status to a server, instead relying on the game, and its implementation of the SDK, to notify the messenger client of the connection address at which the game is being played. *See* Kirmse at ¶ [0059] – [0062]. In Applicants’ invention, a second program, in some embodiments, an LSP, monitors network input and output and determines the connection status of each game that is executing. Applicants’ Specification, pg. 10, ll 14-24. Beneficially, the games do not need to incorporate SDK code to achieve this – the LSP handles this completely separate from the game, unlike the system of Kirmse. Therefore, Kirmse does not anticipate amended claim 1 because it does not teach or suggest the limitation of a second program that determines the connection status of games executing on the terminal.

Applicants respectfully submit that for the reasons herein, Kirmse does not recite all the limitations of the amended claims and requests withdrawal of the rejection under § 102 in view of Kirmse. Furthermore, Kirmse, alone or in combination with the other references of record (combining Kirmse with Garg is discussed below), does not render obvious the invention as embodied in the amended claims. Therefore, Applicants submit that amended claims 1, 12, and 18 and their respective dependent claims are in condition for allowance.

***Rejections Under 35 U.S.C. § 103(a)***

Claim 6 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kirmse of record and in view of U.S. Publication No. 2004/0032876 to Garg (“Garg”). As discussed above, Kirmse fails to teach or recite the claimed invention, specifically searching for an detecting games executing on the terminal or a second program that determines the connection status of games running on the terminal. Garg also fails to teach or suggest either of these limitations.

As pointed out in the Office Action, “[i]n an analogous reference, Garg teaches of a network system that uses an LSP, to intercept data sent and received by a client device. Garg is silent to a gaming network.” Office Action, pg. 7-8. In fact, Garg is only drawn to communication systems in that it discusses a Quality of Service channel reservation system – something not discussed or even hinted at in Kirmse.<sup>2</sup> Applicants respectfully submit that if Garg is silent to a gaming network, it cannot be an analogous reference. Simply “because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references.” MPEP 2143.01, IV, citing Ex parte Levengood, 28 USPQ2d 1300. As the Office Action states, “Garg is silent to gaming,” and just because it teaches the existence of LSPs, does not provide a motivation to combine it with Kirmse.

Garg discusses LSPs, yet Kirmse discloses receiving network information from the game itself. Adding an LSP to Kirmse, while providing network monitoring, does not provide any missing component – Kirmse already receives the network information from the game that

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<sup>2</sup> Neither “reserv\*” nor “Quality of Service” appear anywhere in the Kirmse reference.

incorporates the SDK code. Adding the LSP of Garg, especially in light of Garg's absence of teachings as to how it is applicable to gaming, does not teach or suggest all the limitations of amended claim 1, specifically a second program, separate from the executing games, that determines a connection status for the games determined to be executing by the client program. Instead, in Kirmse, the same message sent by a modified game to the messenger to indicate that a game is executing is used to indicate to the messenger the game's connection status. There would be no motivation – would in fact defeat the primary purpose of Kirmse – to split up the message sent by the game to Kirmse's application simply to shoehorn Garg's LSP in.

Therefore, Applicants respectfully submit that Kirmse and Garg, alone or in combination, fail to render claim 6, or any claim for that matter, obvious. Applicants therefore respectfully submit that claim 6 is in condition for allowance.

#### ***U.S. Patents 7,240,093 and 5,774,673***

Applicants again thank Examiner D'Agostino for bringing U.S. Patents 7,240,093 to Danieli et al. ("Danieli") and 5,774,673 to Beuk et al. ("Beuk") to the Applicants' attention. Applicants submit an IDS herewith adding these references and address each below.

##### **1. Danieli Does Not Anticipate Or Render The Amended Claims Obvious.**

Danieli teaches a game communication system that allows players to join a game across a network and to communicate using a hardware controller to assign game players to channels. *See* Danieli, Abstract, FIGS 1-3. Danieli suffers in part from the same defects Kirmse does – namely the reliance on code integrated by game developers into their game. *See* Danieli, col. 6, lines 1-7:

After logging onto MSN messenger, the player will launch an instance of gaming utility 30. Optionally, as an alternative to first connecting to MSN messenger, upon launching gaming utility 30, *the user may be automatically connected to Internet 10 (or prompted to do so), if not already connected, and/or to MSN messenger by internal functions provided by gaming utility 30.*

(emphasis added). Furthermore, Danieli is more directed to hosting audio chat sessions where the host of the audio chat sessions, through the DIRECTPLAY interface, starts a game for everyone in the audio chat session. *See* Danieli, col. 16, ln. 44 – col. 17, ln. 34. When the game

that players want to play is not a DIRECTPLAY game, the users have to manually find the game by searching their computer for installed games (by searching for .EXE files) and manually starting the game. *Id.* Therefore, Danieli fails to anticipate or render obvious the invention as recited in amended claim 1 because it fails to teach or suggest a client program that searches for and detects which games are executing on the terminal and a second program that determines the connection status of those games.

**2. Beuk Does Not Anticipate Or Render The Amended Claims Obvious.**

Beuk also fails to anticipate or render obvious the limitations of claim 1. Generally, Beuk discloses a system that issues a broadcast frame to computers or devices on a network that, in turn, respond by launching an application to communicate on a specific channel. *See* Beuk, Abstract.

Beuk does not, and indeed cannot, anticipate or render obvious the amended claims because it does not teach or suggest a client program that searches for and detects which games are executing on the computer and a second program that determines the connection status of the games.

Beuk is also inapplicable for a number of basic, functional reasons. First, Beuk specifically requires at least three devices, col. 1, ll-63-66: “[t]o achieve the object, the system according to the invention is characterized: in that said system comprises at least three apparatuses.” Applicants’ system has no such limitation and can operate with a single terminal in communication with other devices over a network.

Secondly, Beuk also seems to force activation of the application on multiple clients if the local user wants to activate the application. This is clearly incompatible with Applicants’ claimed invention as well as any of the prior-cited references – a user activating a game locally does not necessarily force other players on the network to activate the same game.

Thirdly, Beuk also shuns unique addressing schemes, which are inherent to the Internet, and even the local LAN environment, in which Applicants’ invention operates. *See* Beuk, col. 3, ll. 33-40.

Therefore Beuk does not disclose the invention recited in the amended claims, and for the reason above, is not combinable with much of the prior art of record. If the Examiner feels

Applicants' claims do read on some aspect of Beuk, Applicants welcome the opportunity for further dialog.

***New Claims 25-27***

Applicants submit that new claims 25-27 are patentable for at least the reasons herein with respect to claims 1, 6, 12, and 18. No new matter is added and support is found throughout the specification, in at least in pg. 5, line 30 through pg. 5, line 3, pg. 8, line 30 through pg. 11, line 18, and Figs. 2-4.

### CONCLUSION

Applicants' discussion of particular positions of the Office Action or the Examiner does not constitute a concession with respect to any positions that are not expressly contested by the Applicants. Applicants' emphasis of particular reasons why the claims are patentable does not imply that there are not other sufficient reasons why the claims are patentable. Applicants' amendment of the claims does not constitute a concession that the claims are not allowable in their unamended form.

In view of the foregoing remarks and the inability of the prior art, alone or in combination, to anticipate, suggest or make obvious the subject matter as a whole of the invention disclosed and claimed in this application, all the claims are submitted to be in a condition for allowance, and notice thereof is respectfully requested. Applicants respectfully requests consideration and allowance of all of the pending claims.

If the Examiner believes that a telephone conversation with Applicants' Attorney would expedite allowance of this application, the Examiner is cordially invited to call the undersigned attorney.

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